

STATE OF MICHIGAN  
COURT OF APPEALS

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SHARON PAWLOSKI,

Plaintiff-Appellee/Cross-Appellant,

v

ROBERT T. PAWLOSKI,

Defendant-Appellant/Cross-  
Appellee.

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UNPUBLISHED

October 26, 2001

No. 226667

Kent Circuit Court

LC No. 99-002491-DO

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's disposition of marital property and award of alimony. Plaintiff cross appeals and disputes the amount of alimony awarded by the trial court. We remand this case to the trial court with regard to the alimony issue, but we affirm the trial court's disposition of the marital property.

First, defendant argues that the trial court did not consider the appropriate factors or make factual findings regarding its award of alimony. We agree.

"The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. Alimony is to be based on what is just and reasonable under the circumstances of the case." *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000) (citations omitted). The trial court, in deciding whether to award alimony, should consider the following factors:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity. In addition, the court may consider a party's fault in causing the divorce. [*Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).]

The trial court should “make specific findings of fact regarding those factors that are relevant to the particular case.” *Ianitelli v Ianitelli*, 199 Mich App 641, 643-644; 502 NW2d 691 (1993).

Here, the trial court did not make any factual findings regarding the appropriate factors. Rather, the trial court, after trial, simply divided the marital property and awarded plaintiff alimony but did not state its reasons for doing so. We cannot apply the appropriate standard of review, in cases such as this, where we are not given factual findings to review.<sup>1</sup> Thus, we remand this case to the trial court to articulate on the record its basis for awarding alimony and to consider the relevant factors.<sup>2</sup>

Next, defendant argues that the disposition of the marital property was inequitable. On appeal, we must first review the trial court’s findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). Findings of fact, such as a trial court’s valuations of particular marital assets, will not be reversed unless clearly erroneous. *Pelton, supra* at 25. If the trial court’s findings of fact are upheld, we must decide whether the dispositive ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sparks, supra* at 151-152.

Essentially, defendant argues that the division of marital property was inequitable because the trial court did not take into account the tax consequences if he withdraws money from the stock savings plan awarded him. We disagree.

We have discussed a trial court’s consideration of tax consequences in *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993), and explained:

Contrary to defendant’s claim, *an abuse of discretion per se does not occur where a trial court declines to consider tax consequences in the distribution of marital assets*. However, if in the opinion of the trial court the parties have presented evidence that causes the court to conclude that it would not be speculating in doing so, it may consider the effects of taxation . . . . [Emphasis added.]

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<sup>1</sup> The award of alimony is in the trial court’s discretion. *Pelton v Pelton*, 167 Mich App 22, 27; 421 NW2d 560 (1988). However, the trial court’s factual findings are to be reviewed for clear error. *Moore, supra* at 654. A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake has been made. *Id.* If the trial court’s findings are not clearly erroneous, this Court must then decide whether the dispositional ruling was fair and equitable in light of the facts. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). The trial court’s decision regarding alimony must be affirmed unless the appellate court is firmly convinced that it was inequitable. *Id.*

<sup>2</sup> Given our conclusion that the trial court did not make the appropriate factual findings or consider the relevant factors, we cannot address plaintiff’s argument raised on cross appeal that the amount of the alimony award should be increased.

Here, defendant did not present any expert testimony concerning the tax consequences associated with his stock savings plan. Defendant simply asserted and maintains on appeal that it would be reduced by thirty percent. Moreover, defendant did not explain the reason why he would need to withdraw any money from his stock savings plan. Therefore, any consideration by the trial court of the tax consequences would have amounted to speculation. The trial court did not abuse its discretion.

Furthermore, we note that the goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all of the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The division of marital property need not be equal. *Id.* at 114-115.

Plaintiff was given the marital home, which had equity of \$112,000. Defendant was given \$112,000 of his stock savings plan. Defendant was also given \$4,000 for contributions made to his stock savings plan while the divorce was pending. The remaining value of defendant's stock savings plan was divided equally among the parties. Defendant's pension was also divided equally. Plaintiff, after defendant agreed, was given her pension, which was valued at \$3,496. Plaintiff was also given her sewing materials, a table, silverware, and a tractor. Defendant was given his hunting and fishing gear as well as a Steelcase desk. We cannot conclude that this distribution was inequitable.

We remand this case to the trial court for consideration of the relevant factors and an articulation of its reasons for awarding alimony. The trial court shall make these findings of fact on the record within 28 days. The trial court shall cause a transcript of any hearing on remand to be prepared and filed within 21 days thereafter. We affirm the trial court's disposition of marital property.

Affirmed in part and remanded in part. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Richard Allen Griffin

/s/ Patrick M. Meter